

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION AND ITS CHAPTER #106,

Charging Party,

v.

DESERT SANDS UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-4273-E

PERB Decision No. 1468

November 28, 2001

Appearances: California School Employees Association by Madalyn J. Frazzini, Attorney, for California School Employees Association and its Chapter #106; Miller, Brown & Dannis by David G. Miller, Attorney, for Desert Sands Unified School District.

Before Amador, Baker and Whitehead, Members.

DECISION

BAKER, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the California School Employees Association and its Chapter #106 (CSEA) from a Board agent's dismissal of its unfair practice charge. The charge alleged that the Desert Sands Unified School District (District) violated the Educational Employment Relations Act (EERA) by unilaterally transferring bargaining unit work. CSEA alleged that this conduct constituted a violation of EERA section 3543.5.¹

¹ EERA is codified at Government Code section 3540 et seq. Section 3543.5 states, in pertinent part:

It shall be unlawful for a public school employer to do any of the following:

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

After review of the entire record in this matter, the Board holds that CSEA has stated a prima facie violation of EERA section 3543(c) and remands the case to the General Counsel's office for issuance of a complaint.

BACKGROUND

CSEA is the exclusive bargaining agent for the District's classified bargaining unit. Included in the bargaining unit are the classifications of Electronic Repair Technician and Security Agent.

CSEA alleged that prior to September 2000, the District's employees in the classification of Electronic Repair Technician performed all of the video camera installations for the District. Additionally, the job description for the classification of Electronic Repair Technician specifically denotes the responsibility of "maintaining video systems." Attached to CSEA's first amended charge is the written job description for the Electronic Repair Technician position, which includes under the heading "Job Summary," the installation, repair and maintenance of audio-visual and other electronic equipment or systems. The Electronic Repair Technician job description also includes as part of "Essential Job Functions" the maintenance of "video systems."

CSEA alleged that in or about September 2000, the District transferred the duty of video camera installation to employees in the classification of Security Agent, without providing CSEA notice or an opportunity to bargain. Electronic Repair Technicians are paid at a higher range than Security Agents. The charge alleges that installation of video cameras is not even remotely encompassed in the job description of Security Agent and attaches a job description supporting that claim.

DISCUSSION

In reviewing an appeal from a Board agent's dismissal for failure to state a prima facie case, the Board assumes that the essential facts alleged in the unfair practice charge are true.

(San Juan Unified School District (1977) EERB Decision No. 12.)²

The Board agent dismissed the charge for failure to state a prima facie case because the work was not transferred out of the bargaining unit. Implicit in the Board agent's finding is that the transfer of job duties is outside of the scope of representation. The dismissal misapplied Board precedent and must be reversed.

In determining whether a party has violated EERA, the Board has held conduct constitutes a prohibited "per se" unilateral change if: (1) the employer implemented a change in policy concerning a matter within the scope of representation; and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Grant Joint Unified High School District (1982) PERB Decision No. 196.) Here, the charge alleges the change was made without notice to CSEA. The remaining issue is whether the change was within the scope of representation.

Existing PERB precedent on this topic generally involves the transfer of bargaining unit work to non-unit employees. Such is not the case here. The work remained in the bargaining unit. The question for the Board in this case is whether it makes a difference if the work is transferred out of the unit or not.

CSEA contends that it is not determinative in this case that the work remained in the unit. The Board agrees with CSEA's argument that under Alum Rock Union Elementary

² Prior to January 1978, PERB was known as the Educational Employment Relations Board or EERB.

School District (1983) PERB Decision No. 322, this transfer of existing duties between classifications is negotiable, both as to the decision and its effects, regardless of whether the transfer is to a current or to a new classification.

The decision to transfer this bargaining unit work meets the three part test of negotiability established in Anaheim Union High School District (1981) PERB Decision No. 177. First, the transfer between existing classifications is logically and reasonably related to wages, evaluations, transfer and reassignment policies. Second, the subject is of such concern to both management and workers that conflict is likely to occur and negotiation is the appropriate means to resolve such conflict as video camera installation is a major part of the Electronic Repair Technician job description and has never been performed by Security Agents, especially in light of the difference in salary between the classifications. Third, negotiations would not abridge the employer's managerial prerogative because the District has not altered its services and may be free to implement the desired change, pending negotiations with CSEA.

Based on the above analysis, the Board concludes that CSEA has stated a prima facie violation of EERA.

ORDER

The Board REVERSES the Board agent's dismissal of the unfair practice charge in Case No. LA-CE-4273-E and REMANDS the case to the General Counsel's office for issuance of a complaint and further processing consistent with this decision.

Members Amador and Whitehead joined in this Decision.